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Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

No. _____

JEAN T. RADOMSKI, also known as Jean T. Knight,

Petitioner,

vs.

WILLIAM B. KNIGHT, as Special Guardian of William Austin Knight, and William Austin Knight, his ward,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF MAINE

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Maine guardianship statutes governing incompetent persons significantly and directly interfere with a mentally incompetent adult ward's fundamental right to marry, in violation of due process, equal protection and the right of privacy, by requiring the ward to obtain the guardian's consent or court modification of the terms of guardianship before marrying.

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OPINIONS BELOW

The opinion of the Supreme Judicial Court of Maine is published at 414 A.2d 1211 (1980) and is attached as Appendix A. The opinion of the Hancock County, Maine, Superior Court is not published and is attached as Appendix B.

JURISDICTION

Petitioner Jean T. Radomski respectfully petitions this Court to issue a writ of certiorari to review the judgment and opinion of the Supreme Judicial Court of Maine entered in this proceeding on May 30, 1980. Petitioner invokes this Court's jurisdiction under 28 U.S.C. §1257(3) and 28 U.S.C. §2403(b).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

United States Constitution, Amendment IX:

> The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

United States Constitution, Amendment XIV, Section 1:

> ...;nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

* * * *

18 Maine Revised Statutes Annotated §3601. Appointment.

Statutes Involved

> The judge of probate may appoint guardians to the following persons resident in this county, or resident out of the State, and having estate in his county, although over 18 years of age, on written

application of any of their friends, relatives or creditors or of the municipal officers or overseers of the poor of the town where they reside;...

1. Incompetent. All persons, including those mentally ill or of unsound mind and married women who, by reason of infirmity or mental incapacity, are incompetent to manage their own estates or to protect their rights;...

§3603. Contracts made after notice and filing void.

...If a guardian is appointed thereupon, all contracts, except for necessaries, and all gifts, sales or transfers of real or personal estate made by such person after said filing and before termination of the guardianship are void...

§3605. Authority and duties.

Such guardians shall have the custody of the persons of their wards,

> if resident in the State, except so far as the court of probate may from time to time otherwise order...

§3607. Disability of adults under guardianship;...

> When a person over 18 years of age is under guardianship, he is incapable of disposing of his property otherwise than by his last will or of making any contract, notwithstanding the death, resignation or removal of the guardian...

STATEMENT OF THE CASE

Petitioner Jean T. Radomski and Respondent William Austin Knight (known as Buzz Knight) were married in the State of Maine on March 28, 1978. Shortly thereafter, Respondent William B. Knight, father and special guardian of Buzz Knight, brought an action to annul

the marriage on the grounds that Buzz lacked capacity to marry due to mental incompetency and due to the statutory disability of a mental incompetent under guardianship to contract under 18 Maine Revised Statutes Annotated §§ 3603, 3607. The Superior Court of Maine, after trial, denied the requested annulment and dismissed the complaint. The Supreme Judicial Court of Maine reversed and remanded for entry of judgment annulling the marriage.

Buzz Knight, a decorated Vietnam war veteran, suffered extensive brain damage when struck by an automobile in 1972 and was hospitalized at the Togus Veterans Administration Hospital in Maine the next year. Petitioner is a clinical psychologist who began treating

Buzz Knight in 1977 at Togus. A romantic attachment developed between Petitioner and Respondent Buzz Knight and on March 28, 1978, they were married. Earlier that same day Respondent William B. Knight was appointed permanent guardian of Buzz Knight.

The trial court found that Buzz Knight "had sufficient mental capacity to understand the nature of his marriage contract and the duties and responsibilities thereby created." Appendix B, at A-40. The trial court further rejected Respondents' contention that the Maine guardianship statutes automatically disable a mentally incompetent ward from contracting marriage. Appendix B, at A-32.

In her motion to dismiss the

complaint in the trial court, at trial, during appeal and at oral argument on Respondents' appeal, Petitioner contended that to construe the guardianship provisions to disable a mentally incompetent ward from contracting marriage, without prior guardian or court approval, would violate the ward's federal constitutional rights to marry and of privacy.

The Supreme Judicial Court of Maine reversed, holding that regardless of the mental capacity and understanding of the ward, the statutory contractual disability of an adjudicated incompetent under guardianship includes contracts of marriage due, in part, to their effect on a ward's property interests. Appendix A, A-20, 414 A.2d at 1215. The court also concluded:

> Defendant's proper procedure, if she could not obtain the guardian's consent, would have been to seek relief from the Hancock County probate court by filing a motion stating grounds for modification of the guardianship order to permit her marriage with Buzz. In no other way can the integrity of the legislative arrangements for guardianship established by 18 M.R.S.A. ch. 501, subch. III, be maintained.

Appendix A, A-24, 414 A.2d at 1216.

REASONS FOR GRANTING THE WRIT

> The decision below construes Maine's guardianship legislation in a manner inconsistent with this Court's decision in Zablocki v. Redhail, by creating a direct and substantial burden on an incompetent ward's right to marry.

The opinion below holds that Petitioner's marriage to Respondent Buzz Knight was void ab initio since Buzz Knight, an adjudged mentally incompetent ward under a statutory contractual

disability, 18 M.R.S.A. §§ 3603, 3607,[1] had married without the consent of his guardian or without obtaining court modification of the terms of guardianship. Appendix A, A-22,414 A.2d 1211. Prior to this time, the Maine statutes had not been construed to include the contractual disability or the requirement of a guardian's consent before a mentally incompetent ward could marry. The court's reasoning, in part, was as follows:

> Because the marriage of a ward can have great impact on matters for which the guardian of his person is responsible under our statutes, it would be inconsistent with the protective purposes of the relevant Maine legislation to permit an incompetent ward to enter effectively a contract of marriage that is not approved

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[1]These provisions are set forth, in pertinent part, in Constitutional Provisions and Statutes Involved, ante.

> by the duly appointed guardian of his person .... The role of the guardian of the person of an incompetent person is not limited in Maine to protection of his property, nor is the marriage of an incompetent ward without effect on his property interests. In Maine, in the absence of effective agreement to the contrary, marriage has obvious effects on a person's property interests. The fact that the controlling statutes manifest, among other purposes, the purpose of protecting the property of an adjudicated incompetent under guardianship actually tends to support the conclusion that the contractual disability in terms set forth in the guardianship statute does include marriage.

Appendix A, A-20, 414 A.2d at 1215-16.

The Maine guardianship provisions thus interpreted, define a class of Maine residents who may not marry unless they or their intended spouse obtain a guardian's consent or a court order permitting the marriage.

This classification significantly and substantially interferes with the fundamental right to marry in violation of equal protection, due process and the right of privacy. Zablocki v. Redhail, 434 U.S. 374 (1978); Loving v. Virginia, 388 U.S. 1 (1967); Griswold v. Connecticut, 381 U.S. 479 (1965). Just as the right to marry may not be denied to persons on account of their race, Loving v. Virginia, supra, the mentally disabled, who are possessed of constitutional rights, O'Connor v. Donaldson, 419 U.S. 894 (1975), are also entitled to this basic civil right.

> Although Loving arose in the context of racial discrimination, prior and subsequent decisions of this Court confirm that the right to marry is of fundamental importance for all individuals.

Zablocki v. Redhail, supra, at 384. (emphasis added)

The Maine guardianship provisions constitute a direct interference with the right to marry. The opinion below establishes that had Respondent Buzz Knight not been under guardianship at the time of the marriage, his mental disability alone would not have been a bar to marrying. Appendix A, A-17, 414 A.2d at 1215. Instead, his mental capacity to understand the nature and consequences of marriage would have been the governing criteria to entering that state. Thus, the very fact of guardianship imposes the additional burdens of obtaining consent or a court order upon a mentally disabled person before he may marry, in contrast to marriages of non-ward mentally disabled persons. Marriages of non-ward mentally disabled persons are now merely voidable under this opinion. Id.;

Appendix B, A-32-36, slip op. of Superior Court, see Annot. 82 A.L.R. 2d 1040, 1042. Without the guardian's consent, or a court order, the ward's marriage is void. These provisions operate as a "Direct legal obstacle in the path of [mentally disabled] persons desiring to get married..." Zablocki v. Redhail, supra, at 387 n. 12. The guardianship provisions chill the exercise of this fundamental right by mentally disabled wards simply by their having to seek the consent of a third party or obtain a court order.

> Many others, able in theory to satisfy the statute's requirements, will be sufficiently burdened by having to do so that they will in effect be coerced into foregoing their right to marry.

Id. Also, the necessity of seeking a

guardian's consent or judicial approval will inevitably cause delay which is but another manifestation of the directness of this burden. The requirement of seeking consent is inconsistent "with the concept of a free society to let the individual determine whether he can meet the burdens of marriage...." Note, Developments in the Family - The Constitution and the Family, 93 Harvard L. R. 1156, 1255 (1980). The interference in the instant case is direct as it "makes the State an actual participant in the decision to marry." Id. Compare Califano v. Jobst, 434 U.S. 47 (1978) (upholding reduction of social security benefits of certain class of persons upon marriage); Mapes v. United States, 576 F.2d 896 (Ct. Cl.), cert. denied, 439 U.S. 1046 (1978) (upholding different tax rates

for single and married taxpayers); Southwestern Community Action Council v. Community Servs. Administration, 462 F. Supp. 289 (S.D. W. Va. 1978) (regulation prohibiting employment of a person by an agency in a job over which a member of that person's immediate family had supervisory control held not a direct obstacle to marriage).

The Maine guardianship provisions also constitute a substantial interference with a mentally disabled ward's right to marry.

> The substantiality of a burden hinges on how much reluctance or difficulty a person would have in meeting the statutory burden.

Note, Developments in the Family, supra, at 1254. The opinion below vests with the guardian and, ultimately, the supervising court, the authority to approve or disapprove a ward's request to marry. Appendix A, A-22,414 A.2d at 1216. Yet the opinion sets forth no standards by which

the guardian or court should review this request. As a result, the ward's fundamental right to marry is subject to an arbitrary decision by a third party or parties. There can be no more significant impediment to a constitutional right than having its exercise depend on the unfettered discretion of a third party.

> All would agree ... that an arbitrary denial by the state of the freedom to marry would violate the Fourteenth Amendment.

Karst, The Freedom of Intimate Association, 89 Yale L. J. 624, 667 (1980). As noted by Mr. Justice Stevens in his concurring opinion in Bellotti v. Baird, 443 U.S. 622, reh. den. 444 U.S. 887 (1979) when a third party, be it an individual or a court, is conferred with an absolute veto over an individual's constitutionally protected right, the decision of the third party will "reflect personal and

societal values and mores..." which are at odds with the concept of personal freedom of choice in constitutionally protected areas. Id., at 166 (Stevens, J., concurring). The very requirement that a ward seek judicial approval of his marriage is a substantial burden on the exercise of that right. Id.; Zablocki v. Redhail, supra, at 387.

Where a state legislative classification significantly interferes with the fundamental right to marry, a critical examination of the State interests supporting the legislation is required. Id., at 383.

> When a statutory classification significantly interferes with the exercise of a fundamental right it cannot be upheld unless it is supported by sufficiently important state interests and is closely tailored to effectuate only those interests.

Id., at 388. The state interests cited

by the court below are intended to control the marriages of mentally disabled adult wards due to perceived deleterious effects on their estates due to marrying. Appendix A,A-20,414 A.2d at 1215-16. To condition a person's exercise of the fundamental right to marry on the effect of that marriage on his economic status is constitutionally impermissible. Zablocki v. Redhail, supra, at 393-94 (Stewart, J., concurring).

> The economic aspects of a prospective marriage are unquestionably relevant to almost every individual's marriage decision. But I know of no other state statute that denies the individual marriage partners the right to assess the financial consequences of their decision independently. I seriously question whether any limitation on the right to marry may be predicated on economic status....

Id., at 404 n. 4 (Stevens, J., concurring).

The only discernible purpose of the

guardianship provisions in requiring the mentally disabled wards to obtain consent to marry appears to be the preservation of their estates. This beneficent purpose may be a legitimate state interest, "but, since the means selected by the State for achieving [this interest] unnecessarily impinge on the right to marry, the statute cannot be sustained." Id., at 388.

As noted above, not all mentally disabled persons in Maine suffer the burden of seeking this third party consent to marry, but only those under guardianship. The challenged provisions are thus grossly underinclusive with respect to all mentally disabled persons whose marriage has a potential deleterious effect on their estates. Id., at 390. Moreover, the State has no similar provisions respecting the multitudes of nondisabled persons whose impending marriages

threaten enormous changes in their estates. The provisions' classification is also overinclusive insofar as it ignores the possibility that the ward's intended spouse may greatly increase the couple's wealth so that the marriage thereby would not jeopardize the ward's estate. The State has painted with too broad a brush by unnecessarily entwining a ward's fundamental right to marry with a paternalistic concern for his economic well-being. Karst, supra, note 210, at 670. The guardianship provisions do not contemplate the automatic termination of an adult incompetent ward's guardianship upon his marriage. The State's concern for the economic security of the mentally disabled ward may be satisfied after his marriage simply by the continuing overview of his affairs by the guardian. Such continuing overview by the guardian will be "closely tailored"

to effectuate the State's interests without violating the ward's fundamental right to marry. Zablocki v. Redhail, supra, at 388.

Finally, a comparison between the right to marry of the mentally disabled and that of minors is appropriate.

> First, though minors do have constitutional rights, their rights are not coextensive with those of adults, partly because of their inability fully to exercise a mature free choice.
> ...
> Second, even if minors do have a constitutionally protected right to marry, the state is often held to have a valid interest in protecting youth in areas in which it could not 'protect' adults, an interest which suffices to justify legislation impinging on the constitutional rights of minors.

Note, Developments in the Family, supra, at 1258. The restrictions on a minor's right to marry based on age are valid because they are temporary and apply to everyone within the class. Grose,

A Constitutional Analysis of Pennsylvania's Restrictions Upon Marriage, 83 Dickinson L. R. 71, 82 (1978); see, Bellotti v. Baird, supra, at 642. This Court also has noted that the minor's right to marry only with parental consent is constitutional due to the minor's lack of capacity to make an informed and mature decision. Id., at 635-36, n. 13. For these reasons, third parties (usually the parents) are permitted to exercise a veto over a minor's fundamental right to marry. However, this Court struck down a parental veto of a minor's decision to have an abortion due to the grave and permanent consequences to the minor of such a veto. Bellotti v. Baird, supra. The court below has construed the Maine guardianship legislation so that a mentally disabled ward who is competent to make the decision to marry can be

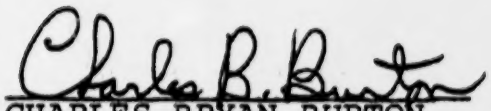
permanently and arbitrarily deprived of his fundamental right to marry by the absolute veto of the guardian or supervising court.

The writ of certiorari should be granted to clarify this important area of the law and resolve the conflict between the decision below and the decisions of this Court.

CONCLUSION

The decision below would render illusory the fundamental right to marry of the mentally disabled in Maine by permitting third parties to have an absolute and arbitrary veto over the exercise of that right. For this reason the petition for certiorari should be granted and the judgment of the Supreme Judicial Court of Maine reversed with instructions to reinstate the judgment of the Superior Court of Hancock County, Maine, in this proceeding.

Respectfully submitted,

By 

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DATED: August 27, 1980.

APPENDIX A

MAINE SUPREME JUDICIAL COURT

Reporter of Decisions
Decision No. 2338
Law Docket No. Han-79-11

WILLIAM B. KNIGHT, as
Special Guardian of
William Austin Knight,
and William Austin
Knight, his ward

v.

JEAN T. RADOMSKI, also
known as Jean T. Knight

Argued: January 8, 1980
Decided: May 30, 1980

Before: McKUSICK, C.J., and WERNICK,
GODFREY, and GLASSMAN, JJ.

GODFREY, J.

William B. Knight, father and guardian of William Austin Knight (known as "Buzz"), brought this action, as special guardian, to annul the marriage of Buzz to defendant Jean T. Radomski. The action was brought in Superior Court on behalf of Buzz pursuant to 19 M.R.S.A. §632 (Supp. 1979-80)[1] on essentially three grounds: first, that Buzz Knight had been declared mentally incompetent before the marriage and his duly appointed guardian had had no notice of the marriage and had not consented to it; second, the marriage license had been procured by

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[1] 19 M.R.S.A. §63 provides, in part, as follows:

> When the validity of a marriage is doubted, either party may file a complaint as for divorce, and the court shall order it annulled or affirmed according to the proof . . . .

fraudulent or improper procedure; and third, on the date of the marriage, defendant had not completed a valid divorce from her previous husband.[2] After a trial without jury, the Superior Court denied the requested annulment and dismissed the complaint. Knight, Sr. filed this timely appeal. Radomski filed a cross-appeal, which has since been abandoned. We sustain the plaintiff's appeal and reverse the judgment of the Superior Court.

From the voluminous record on appeal, we conclude that the following facts are undisputed: On October, 1972, Buzz Knight was struck by an automobile

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[2] 19 M.R.S.A. §33 (1964) provides as follows:

> Marriages, contracted while either of the parties has a former wife or husband not divorced, living, are void.

while jogging and suffered severe brain damage with paralysis and change of personality. He was eventually sent to the Veterans Administration Hospital at Togus for treatment. In March, 1973, William B. Knight was appointed conservator of his son's estate pursuant to 18 M.R.S.A. §3701 (1964).[3] In October, 1973, Buzz was divorced from the woman to whom he had been married before the accident.

Early in 1977 the defendant, Dr. Jean Radomski, a psychologist at Togus, began working with Buzz Knight as a patient. Dr. Radomski, who was married at the time, became romantically attracted to Buzz and in March, 1977, asked his parents if they would object to her marrying him. After the senior Knight stated

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[3]This section has since been repealed, effective January 1, 1981. P.L. 1979, ch. 540, §24-C.

his reservations about her proposal, she still continued to work with Buzz as a patient.

On September 12, 1977, William B. Knight filed a petition for guardianship of Buzz. On the basis of considerable medical testimony, the probate judge of Hancock County, acting pursuant to 18 M.R.S.A. ch. 501, subch. III (1964 and Supp. 1979-80), issued a decree on January 17, 1978, imposing a guardianship on Buzz Knight and appointing William B. Knight guardian of his estate and temporary guardian of his person for a period of sixty days. Jean Radomski appeared at the probate court hearing in opposition to the appointment of Knight, Sr., as guardian. On March 21, 1978, the probate court issued an order appointing William B. Knight permanent guardian of the person of Buzz Knight, conditioned on the

filing of a bond.

Defendant stopped treating Buzz as a patient on September 12, 1977, the same day that Mr. Knight filed the petition for guardianship. She had been served on September 2, 1977, with a complaint by her husband, Theodore Radomski, for a Maine divorce. Her husband left Maine in the same month and became a resident of Arizona, where he again filed for divorce. In October, defendant left Maine and became a resident of Colorado.

Sometime in March, 1978, Theodore Radomski went to the Dominican Republic to obtain a quick divorce. Defendant had signed a power of attorney allowing her husband's Dominican attorney to appear for her in her absence. On March 28, the day after he obtained the Dominican divorce, Theodore Radomski delivered the decree to defendant in Boston.

On the same day, March 28, 1978, the probate judge approved the bond filed by William B. Knight pursuant to the guardianship order of March 21. The judge issued a formal letter of appointment of Knight as permanent guardian, and his order was docketed before noon on March 28.

At 1:30 p.m. on the same day, a marriage ceremony took place between Buzz Knight and defendant Radomski at the Togus Hospital. The ceremony was witnessed by two of defendant's ex-patients. Also dated March 28, 1978, is an order of the probate judge of Kennebec County granting a waiver of the five-day waiting period on the ground that Jean Radomski had patients waiting in Colorado. The couple immediately left the hospital and went to Connecticut and then to Colorado the next day. Buzz Knight was later returned to

Togus Hospital, where he remains pending the outcome of this litigation.

At trial, the presiding justice listened to much testimony from witnesses on both sides concerning Buzz Knight's competence, mental and emotional condition, comprehension of the marital relationship, and tractability. Buzz himself did not testify. The justice began the opinion accompanying his order by stating that he drew no inference from the failure of Buzz to testify and that he found the evidence conflicting as to whether Buzz himself desired an annulment. He stated, also, that the expert witnesses were in disagreement about whether Buzz suffered from psychosis. He concluded that the plaintiff gurdian, William B. Knight, had failed to meet his burden of showing that Buzz "lacked sufficient mental capacity at the time of the marriage." He found

that it was "more probable than not that on March 28, 1978, William Austin Knight had sufficient mental capacity to understand the nature of the marriage contract and the duties and responsibilities thereby granted."

The case presents a threshold issue because of the provision of 19 M.R.S.A. §632 (Supp. 1979-80) that "either party" to a marriage may file a complaint for annulment when the validity of a marriage is doubted. In Inhabitants of Winslow v. Inhabitants of Troy, 97 Me. 130, 132, 53 A. 1008, 1009 (1902), this Court stated that a guardian "only" could not bring an annulment action, but the Court declined to say whether a guardian could bring such an action on behalf of his incompetent ward.[4] We hold now that a

[4]The annulment statute in Troy was virtually the same as the present 19 M.R.S.A. §632, supra note 1.

guardi n of an incompetent has standing to bring an annulment action under section 632 on behalf of the ward. Such standing is inherent in the guardian's responsibility for protecting the rights of the ward under 18 M.R.S.A. subch. III (1964 & Supp. 1979-80).[5]

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[5]Title 18, M.R.S.A. has been repealed in its entirety by P.L. 1979, ch. 540, §24-C, effective January 1, 1981, and replaced by P.L. 1979, ch. 540, §1, the Maine Probate Code title 18-A of the Revised Statutes. Under section 8-401(b)(3) of the new Code, a guardian of an incompetent person will continue to hold the appointment after January 1, 1981, but the powers and duties of the appointment will be governed by the new Code.

Guardianship of incapacitated persons will be governed by article V, parts 3 and 4, of the new Code. 18 A M.R.S.A. §5-303 provides the procedure for appointment of a guardian, and §5-312 defines a guardian's general powers and duties. Subsection (a) of section 5-312 provides, in part:

> A guardian of an incapacitated person has the same powers, rights and duties respecting his ward that a parent has repecting his unemancipated minor child . . . .

With respect to the merits, Knight, Sr., relies on several provisions of 18 M.R.S.A. ch. 501, subch. III. Section 3601(1) (1964 & Supp. 1979-80) provides that guardians may be appointed for

> all persons, including those mentally ill or of unsound . . . who, by reason of infirmity or mental incapacity, are incompetent to manage their own estate or to protect their rights.

Under subdivision (1) of subsection (a),

> To the extent that it is consistent with the terms of any order by a court of competent jurisdiction . . . he /the guardian/ is entitled to custody of the person of his ward . . . .

Marriage of minor persons is governed by 19 M.R.S.A. §62 (Supp. 1979-80), which provides that a marriage certificate shall not be issued to a minor without the written consent of the parent guardian or person having custody by court order.

Parts 3 and 4 of article 5 of the new Probate Code provide procedures for protecting the property of a person under disability. There is, however, no provision using the language of the present title 18, sections 3603 and 3607.

Section 3603 provides:

> When such application /for appointment of a guardian/ is made and notice issued thereon by the judge, the applicants may cause a copy of their application and the order of the court thereon to be filed in the registry of deeds for the county. If a guardian is appointed thereupon, all contracts, except for necessaries, and all gifts, sales or transfers of real or personal estate made by such person after said filing and before the termination of the guardianship are void. This section does not add anything to the validity of any such act previous to said filing.

Section 3605 provides, in part:

> Such guardians shall have the custody of the persons of their wards, if resident in the State, except so far as the court of probate may from time to time otherwise order . . . .

Section 3607 provides:

> When a person over 18 years of age is under guardianship, he is incapable of disposing of his property otherwise

> than by his last will or of making any contract, notwithstanding the death, resignation or removal of the guardian. When, on application of any such person or otherwise, the judge finds that a guardian is no longer necessary, he shall order the remaining property of the ward to be restored to him, except a legal compensation to the guardian for his services.

In addition to the quoted provisions from title 18, Knight, Sr., relies on 19 M.R.S.A. §32 (1964), which provides: "No mentally ill or feebleminded person or idiot is capable of contracting marriage." Marriages prohibited by section 32, if solemnized in Maine, are declared "absolutely void" by 19 M.R.S.A. §631 (Supp. 1979-80).

The Superior Court rejected Knight's arguments. It held that marriage is not a contract of the sort prohibited by the quoted provisions of

title 18. In so ruling, the court relied on Roether v. Roether, 180 Wis. 24, 191 N.W. 576, 28 A.L.R. 631 (1923), in which the Wisconsin court held, in an action by a wife to affirm her marriage to an alleged incompetent, that marriage is not a "contract" within the meaning of a statute resembling 18 M.R.S.A. §3603. The Superior Court conducted its own inquiry into Buzz Knight's competence to marry at the time of the marriage, holding that the probate court's prior appointment of a permanent guardian of his person, finalized on the day of the marriage, was not controlling because the competence requisite for marriage is different from that required for other matters.

The Superior Court relied on Inhabitants of St. George v. City of Biddeford, 76 Me. 593 (1885), which involved a collateral attack on the validity

of a marriage of an allegedly insane person. However, St. George was not a case where another court had already made an adjudication of incompetence and appointed a guardian of the person of the adjudicated incompetent. In St. George, the judge submitted to a jury the question of the man's competence to marry, instructing the jury that the man need not have understood all the duties, obligations and responsibilities which the marriage relation imposed upon him but "should have had at the time sufficient mental capacity to enable him to understand the nature of the marriage relation, the nature of the marriage contract, and to understand that upon himself he took with it all the duties, obligations and responsibilities which the law would impose upon him as a result of that contract on his part, whatever they were." 76 Me.

at 597. This Court approved the judge's instructions and stated that a person "may have mental competency to make one contract and not another." 76 Me. at 596.[6] Cases in other states are generally in accord. See Annots., "Mental Capacity to Marry," 28 A.L.R. 635, 644 (1924); 82 A.L.R. 2d 1040, 1046 (1962).

As a general rule, a party attacking the validity of a marriage on the ground of mental incapacity bears the burden of proof. E.g., Inhabitants of Winslow v. Inhabitants of Troy, supra; Johnson v. Johnson, N.D., 104 N.W.2d 8 (1960). See Annots., 28 A.L.R. 635, 652 (1924); 82 A.L.R.2d 1040, 1053 (1962). In the present case, the Superior Court found that "it is more probable than not" that Buzz Knight had "sufficient mental

---

[6] R.S. 1884, ch. 59, §2 provided that "no insane person or idiot shall be considered capable of contracting marriage."

capacity to understand the nature of his marriage contract," which would imply, in effect, that even if the burden were on the defendant, she had met it. If this case did not involve a guardianship, we would necessarily review the Superior Court's decision under a clearly-erroneous standard. However, we do not reach any question of the sufficiency of the evidence to support the court's finding of fact because we disagree with the court's ruling that 18 M.R.S.A. §§3603 and 3607 do not apply to marriage contracts.

Nothing in the provisions of sections 3603 and 3607, considered in the entire context of subchapter III of 18 M.R.S.A. ch. 501, suggests that exceptions should be made for any particular kind of contract, especially in view of the express exception for "necessaries"

appearing in section 3603 itself. On the contrary, section 3607 states unequivocally that a person under guardianship shall be legally "incapable . . . of making any contract." Against this statutory language, we could uphold the decision of the Superior Court only by holding that marriage is not really a "contract" in any sense that could have been intended by sections 3603 and 3607.

The law of Maine has always regarded marriage as a civil contract. Ninety-five years ago, in Inhabitants of St. George v. City of Biddeford, supra, this court described the marriage contract as follows: "Although marriage be 'a status' or 'a relation' or 'an institution,' it requires the intelligent consent of two persons to make the contract that produces it." 76 Me. at 596. See also Dolan v. Dolan, Me., 259 A.2d 32, 52

A.L.R.3d 577 (1969). Legislation relating to domestic relations, contained in title 19 of the Revised Statutes, is replete with references to the concept of "contracting marriage". In particular, 19 M.R.S.A. §32 (1964) provides that no mentally ill or feebleminded person or idiot is "capable of contracting marriage".

It is true that section 32 does not mention incompetents under guardianship and arguably would not apply to an adjudicated incompetent who did not qualify as "mentally ill" or "feebleminded" or idiotic. But we cannot infer from that omission an intent in 18 M.R.S.A. §§3603 and 3607 to create an exception to the contractual disability of an adjudicated incompetent under guardianship. Instead, it is necessary to conclude that the Maine statutes treat marriage as

arising out of contract and that if it had been the purpose of the legislation to except contracts of marriage from the disability of an adjudicated incompetent under guardianship, it would have made explicit provision to that effect. In the absence of explicit language, we decline to read such an exception into the guardianship statute.

It should be emphasized that William B. Knight had been appointed guardian of the person as well as the property of Buzz Knight. The responsibilities of a guardian of the person include the full spectrum of responsibilities necessary to provide for the care and overall well-being of the ward, subject to the general superintendency of the court. Because the marriage of a ward can have great impact on matters for which the guardian of his person is

responsible under our statutes, it would be inconsistent with the protective purposes of the relevant Maine legislation to permit an incompetent ward to enter effectively a contract of marriage that is not approved by the duly appointed guardian of his person.

In Roether v. Roether, supra, the Wisconsin Supreme Court held that although marriage is a civil contract, "its essence is to define a status in society rather than to regulate control over property," whereas in the guardianship statute, "the legislature was dealing with the latter subject". 180 Wis. at 27, 191 N.W. at 577. The Maine statutory context is different: The role of the guardian of the person of an incompetent person is not limited in Maine to protection of this property, nor is the marriage of an incompetent ward without

effect on his property interests. In Maine, in the absence of effective agreement to the contrary, marriage has obvious effects on a person's property interests. The fact that the controlling statutes manifest, among other purposes, the purpose of protecting the property of an adjudicated incompetent under guardianship actually tends to support the conclusion that the contractual disability in terms set forth in the guardianship statute does include marriage.

In conclusion, the legislation governing this case, 18 M.R.S.A. ch. 501, subch. III, requires us to hold that the marriage of Jean Radomski and Buzz Knight, without the consent of the duly appointed guardian of the person of Buzz, should have been annulled. Under that legislation, the probate court of Hancock County retains continuing jurisdiction over the

guardianship of Buzz Knight. Having already duly adjudicated Buzz to be incompetent and placed him under formal guardianship, that court remained the proper forum for determination of issues relating to his welfare. It is clear from the record in this case that marriage could cause profound changes in the ward's life. Disputes over the extent and desirability of those changes should be resolved by the court superintending the guardianship. That court has authority under 18 M.R.S.A. §3605, in appropriate circumstances, to modify the terms of the guardianship, and its decisions in that regard are reviewable by the Superior Court sitting as the Supreme Court of Probate. 4 M.R.S.A. §401 (1979).[8]

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[8]Repealed, effective January 1, 1981, by P.L. 1979, ch. 540, §7-B.

Defendant's proper procedure, if she could not obtain the guardian's consent, would have been to seek relief from the Hancock County probate court by filing a motion stating grounds for modification of the guardianship order to permit her marriage with Buzz. In no other way can the integrity of the legislative arrangements for guardianship established by 18 M.R.S.A. ch. 501, subch. III, be maintained.

In view of our disposition of the case, it becomes unnecessary to consider the effect of the fact that the probate judge of Kennebec County, who granted a waiver of the statutory waiting period for marriage required by 19 M.R.S.A. §61, had not been informed when he did so that Buzz Knight was under guardianship as an incompetent by order of the Hancock County probate court. It also

become unnecessary for us to pass on the validity of the Radomskis' Dominican divorce. We intimate no opinion on those questions.

The entry is:

Appeal sustained.

Judgment reversed.

Remanded for entry of judgment for plaintiff annulling the marriage.

Cross-appeal dismissed.

All concurring.

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APPENDIX B

STATE OF MAINE
HANCOCK, ss

SUPERIOR COURT
Civil Action,
Docket No. 78-96

WILLIAM B. KNIGHT, in his capacity as Special Guardian Ad Litem of William Austin Knight, and WILLIAM AUSTIN KNIGHT, his ward,

Plaintiffs

vs.

JEAN T. RADOMSKI, also known as JEAN T. KNIGHT,

Defendant

OPINION

The complaint in this action seeks an annulment of the marriage of William Austin Knight to Jean T. Radomski which occurred on March 28, 1978. William B. Knight, father of William Austin Knight, commenced this action on behalf of his son and in his capacity as Special Guardian. By pre-trial order, this Court appointed William B. Knight as guardian ad litem of William Austin Knight.

Perhaps the Court should observe at the outset that the evidence is conflicting as to whether William Austin Knight personally desires that the marriage be annulled. Although either party could have called him as a witness, and the Court indicated a willingness to hear testimony at the Togus V. A. Hospital if necessary, William Austin Knight did not testify in these proceedings. The Court draws no inference of any kind from that fact.

The plaintiff-guardian attacks the validity of the marriage on three broad grounds: (1) failure to comply with statutory requirements concerning the recording of marriage intentions and issuance of a town clerk's certificate, (2) lack of capacity of the defendant by virtue of a pre-existing marriage and (3) lack of capacity of the plaintiff-ward because of pre-existing guardianship proceedings and mental incompetency.

The plaintiff-guardian contends that notice of intentions of marriage should have been filed in Ellsworth as the town of residence, and that application for a waiver of the five-day waiting period should have been made in Hancock County (19 M.R.S.A. §62 et seq). These deficiencies, if indeed they are such, do not invalidate an otherwise valid marriage. Gardiner v. Manchester, 88 Me.

249, 33 A 990 (1896); Damon's Case, 6 Me. 150 (1824); 61 ALR2d 847.

The plaintiff-guardian also contends that the defendant lacked capacity to marry on March 28, 1978, either by virtue of a pre-existing marriage (19 M.R.S.A. Section 33), or by virtue of the suspension of her capacity under foreign law. The defendant suggests that her admission of a prior marriage to Theodore Radomski is insufficient evidence to generate this issue without more formal proof. The Court disagrees and finds that there was a valid pre-existing marriage. The plaintiff suggests that this Court refuse recognition of the divorce obtained on March 27, 1978 by Theodore Radomski in the Dominican Republic. This Court can find no public policy of the State of Maine requiring non-recognition of a foreign divorce between

participating parties, neither of whom are domiciled in Maine. Non-recording, or failure of promulgation, has not been established and this Court will assume the validity of the Dominican decree.

The plaintiff presented evidence that a divorcee (but not a divorcé) must wait ten months before she is permitted to re-marry under the laws of the Dominican Republic. The Court is not persuaded as to the accuracy of that interpretation. However, even if that interpretation is accurate, there may be sound reasons of public policy for refusing to give effect to a restriction so clearly contrary to our own principles of equal protection. Should our courts permit Theodore Radomski to re-marry while denying the same privilege to his former wife? This Court cannot sustain

. . .

the second grounds of attack on the marriage, if otherwise a valid marriage.

In September of 1977, guardianship proceedings were initiated in the Probate Court in Hancock County. On January 17, 1978, the Judge of Probate found William Austin Knight incompetent by reason of mental incapacity and appointed William B. Knight guardian of his estate and temporary guardian of his person. On March 21, 1978, William B. Knight was appointed permanent guardian of the person and Letters of Guardianship were issued on March 28, 1978. An appeal was filed by the defendant herein as well as by the guardian ad litem appointed by the Probate Court.

The plaintiff-guardian argues that by virtue of the applicable statutes (18 M.R.S.A. §3603 and 3607) and the rulings of the Probate Court, the ward

automatically lacks capacity to marry. The weight of authority is otherwise. Griffin v. Beddow, 268 S.W.2d 403 (Kentucky 1954); In re Hanrahan's Will, 194 A. 471 (Vermont 1937); Bradford v. Parker 99 N.E.2d 537 (Mass. 1951); 82 ALR2d 1040; 28 ALR 635; 52 Am. Jud. 2d 881. The Maine cases suggest that the determination of the Probate Court, even if final, do not create so much as a presumption of mental incapacity to marry. (See discussion below).

Finally, this Court must deal with the basic question in this case, to wit: Whether William Austin Knight lacked sufficient mental capacity at the time of his marriage to Jean T. Radomski. Section 32 of Title 19 M.R.S.A. provides that "no mentally ill or feeble-minded person or idiot is capable of contracting marriage . . ." In construing similar

statutes, courts generally have found them to be declaratory of the accepted standard "as to whether there is a capacity to understand the nature of the contract and the duties and responsibilities which it creates." 28 ALR 641; 82 ALR2d 1044.

In addition to his argument that guardianship per se renders the ward incapable of contracting a marriage, the plaintiff suggests that the statutory standards of competency are the same. In his trial brief, the plaintiff states that the statutory standard means "basically that the ward must have the capacity to enter into contracts and transact business in order for him to have the capacity to marry." That position is contrary to the majority view (28 ALR 645 and 82 ALR 1046) and misconstrues the Maine cases cited, to wit: Atkinson v. Medford 46 Me. 510

. . .

(1859); St. George v. Biddeford, 76 Me. 593 (1885).

In the Atkinson case, the trial judge instructed the jury that the same degree of mind sufficient to enable him to enter into a valid contract, or make a valid deed or will, would be sufficient to enable him to contract matrimony. The Law Court held that the instruction was "sufficiently favorable" (emphasis added) for the defendant-appellant who was attacking the validity of the marriage.

In the St. George case, the defendant-appellant, who sought to uphold the validity of the marriage, excepted to the jury instructions as requiring that the party have "common capacity to make contracts generally". The Law Court said the charge was not "amenable to the criticism" of the defendant-appellant and interpreted the charge as saying merely

that "the same rule would apply to this man making this contract of marriage, that would apply to other men making other contracts." Earlier in its opinion, the Court quoted with agreement that "nature makes no leaps, but passes from one complexion /sanity/ to its opposite by graduations so gentle that one shades imperceptible into the other, and no one can fix positively the point of transition". Thereafter, the Court said: "To avoid this difficulty as far as is practically possible, and in accordance with a common sense view of the matter, the law applies different rules or tests under different circumstances. It tries to ascertain whether a person, alleged insane, is such in respect to the particular question which is being investigated. A man may be of unsound mind in one respect, and not in all respects. He may have mental

competency to make one contract and not another." (emphasis added). In other words, the law requires that each person have mental competency, but the standard may vary with the nature of the circumstances and the purpose for which competency is required.

As the Law Court observed in the St. George case, the instant case is "an uncertain case, and not without strong points upon either side".

The Court heard testimony from persons with varying degrees of expertise and with varying opportunities to observe William Austin Knight before and after the marriage. The Court heard from witnesses who were as intensely interested as the father and the defendant wife. The Court heard testimony from witnesses who are involved on a daily basis with William Austin Knight and from witnesses

who have had little or no personal contact.

There can be no doubt that William Austin Knight suffered substantial brain damage as a result of trauma to the head in 1972. He has been a patient at various military and V. A. hospitals more or less continuously since. As a direct result of the brain damage, he has suffered a loss of both mental and physical functions. He has also sustained an adverse behavioral reaction to his injury and subsequent treatment (or lack thereof). Psychiatric experts disagree as to the existence or non-existence of any mental disorder of psychotic proportions.

The Court heard considerable testimony relating to the conduct of William Beedle Knight and of Jean T. Radomski, their good faith or bad faith, and the propriety of various programs of treatment. A quotation from an opinion of the North

Dakota Supreme Court seems apt: "The issue here for determination is not the methods of character, good, bad or indifferent of the defendant wife or of other interested parties, nor whether the marriage in question in the opinion of relatives or others was hasty or ill advised, as common experience indicates that such many times is the wont of the human race, but rather the critical inquiry is whether . . . /William Austin Knight/ . . . at the very date of such marriage, was of unsound mind thereby lacking sufficient mental capacity to contract a valid marriage" . . . . Johnson v. Johnson 104 N.W.2d 8 at 13 (N.D. 1960).

For this marriage to be valid, William Austin Knight must have had at the time sufficient mental capacity to understand the nature of the marriage contract, that by it he became the husband of Jean T. Radomski and assumed all the duties

and responsibilities and all the rights growing out of that relation. This Court agrees with the trial judge in the St. George case that he need not have understood all the duties, obligations and responsibilities; but that he have sufficient capacity to understand that he was undertaking all of the responsibilities which the law would impose as a result of his marriage, whatever they were.

This Court also agrees with the comment of the trial judge in the Griffin case, after reciting the general rule: "But it has also been observed that marriage depends to a great extent on sentiment, attachment and affection which person with equal, as well as those with stronger intellects feel and that it does not depend, to the extent that ordinary contracts do, on the exercise of clear reason, discernment and sound judgment." Griffin v. Beddow, supra at 405.

This Court must approach with great reluctance the prospect of judicially terminating a marriage entered into voluntarily, without fraud, and with the apparent consent of both parties. The plaintiff-guardian bears the burden of satisfying this Court by clear and convincing evidence that William Austin Knight lacked sufficient mental capacity at the time of the marriage. This he has failed to do. On the contrary, the Court is satisfied that it is more probably than not that on March 28, 1978, William Austin Knight had sufficient mental capacity to understand the nature of his marriage contract and the duties and responsibilities thereby created.

Accordingly, counsel for the defendant are directed to prepare an appropriate order for the entry of final judgment herein in favor of the defendant and against the plaintiff

Date: June 19, 1979

/s/ David G. Roberts
David G. Roberts,
Justice, Superior Court

Supreme Court, U.S.
FILED
SEP 25 1980
MICHAEL RODAK, JR., CLERK

No. 80-325

SUPREME COURT OF THE UNITED STATES

October Term, 1980

JEAN T. RADOMSKI, also known as Jean T. Knight,

Petitioner

v.

WILLIAM B. KNIGHT, as Special Guardian of William Austin Knight, and William Austin Knight, his ward,

Respondents

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF MAINE

BRIEF FOR RESPONDENTS IN OPPOSITION

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OPINIONS BELOW

The opinion delivered in the court is officially reported as Knight v. Radomski, Me., 414 A.2d 1211 (1980). The opinion delivered in the Maine Superior Court is appended to the Petition for Writ of Certiorari.

JURISDICTION

Respondents respectfully submit this Court does not have jurisdiction to hear the instant case. Petitioner seeks to invoke the jurisdiction of this Court under 28 U.S.C. §1257 (3).

Petitioner's argument is based exclusively upon the allegation that Maine's guardianship statutes, as construed by Maine courts to prohibit a mentally incompetent ward from marrying without his

guardian's consent or without a court modification of the terms of the guardianship violate federal constitutional guarantees of equal protection, due process and privacy.

The constitutionality of the statute, the sole federal question petitioner would present to this court, was not raised before, preserved nor passed upon by Maine courts. Under such circumstances, this Court has refused to decide federal constitutional questions. Cardinale v. Louisiana, 394 U.S. 437 (1969); Hill v. California, 401 U.S. 797 (1971); Estate of Wilson v. Aiken Industries, 439 U.S. 877 (1978).

In Cardinale v. Louisiana, 394 U.S. 437 (1969), a writ of certiorari was

granted to determine the constitutionality of a Louisiana statute requiring confessions used as evidence at trial to be introduced in their entirety. When at oral argument it became apparent that the issue had not been raised or considered below, the court dismissed the writ for lack of jurisdiction.

This Court also noted sound policy reasons for the rule:

> Questions not raised below are those on which the record is very likely to be inadequate, since it certainly was not compiled with those questions in mind. And in a federal system it is important that state courts be given the first opportunity to consider the applicability of state statutes in light of constitutional challenge, since the statutes may be construed in a way which saves their constitutionality. Or the issue may be blocked by an adequate state ground. Id. at 439.

Respondent submits those policies are fully as applicable here.

Maine law likewise precludes appellate consideration of issues not preserved below. Younie v. State, Me., 281 A.2d 446 (1971), (citing Cardinale v. Louisiana, supra); Teel v. Colson, Me., 396 A.2d 529 (1979); Reville v. Reville, Me., 289 A.2d 695 (1972).

> . . . a party who seeks to raise an issue for the first time at the appellate level is held, in legal effect, to have "waived" the issue insofar as he utilizes it to attack a judgment already entered and from which an appeal is taken; therefore, appellate review will be denied to such question. . . . This principle is controlling notwithstanding that the issue pertains to an alleged violation of the Constitution of the United States. Reville v. Reville, supra, at 697.

Under Rule 21.1 (h) U.S. Sup. Ct. R., petitioner must indicate in his petition the manner in which the federal questions sought to be reviewed were raised, the method of raising them and the way they were passed upon by the court, and include pertinent quotations of specific portions of the record and specific references to the places in the record where the matter appears in order to "show that the federal question was timely and properly raised so as to give this court jurisdiction to review the judgment on a writ of certiorari."

Petitioner utterly fails to comply with this Rule. On the contrary, petitioner merely claims, without more, that she raised the constitutionality of the subject statutes in her motion to dismiss the

complaint in the trial court, at trial, during appeal and at oral argument on respondent's appeal.

Furthermore, petitioner's claims are totally false. Respondents categorically deny the issue was raised below. (Petitioner did move to dismiss the complaint in the trial court, by motion dated June 10, 1979, in which she argued that allowing a guardian ". . . whose authority has not ripened through a final order of the Court, and whose appointment as guardian has in fact been appealed . . . to interfere with the fundamental right of his putative ward to marry. . . Annulment of this marriage <u>without a prior determination of his competency</u> would violate William A. Knight's fundamental con-

stitutional rights . . ." (emphasis added) The motion did not request a ruling on the constitutionality of Maine's guardianship statutes per se, particularly since William B. Knight had in fact been appointed permanent guardian before the marriage and hence a prior determination of the guardian's competency had been made.)

See petitioner's MOTION TO DISMISS, AFFIRMATIVE DEFENSE, AND ANSWER TO AMENDED COMPLAINT in Appendix A. (Petitioner's Motion to Dismiss, Affirmative Defense and Answer to the original complaint is substantially identical and is not included here for reasons of brevity.)

See also the opinions of the Maine Superior Court and Maine Supreme Judicial Court, which make no mention of a con-

stitutional claim, appended to petitioner's petition.

See also statements of issues to be presented at trial from petitioner's and respondents' pre-trial memoranda, excerpted in Appendix C and Appendix D.

Maine practice requires careful and thorough preparation of the statement of the issues in the pre-trial memorandum.

> The object of the memorandum is to expose the issues as counsel genuinely understand them at the time of the conference on the basis of investigation and consideration of the case that has been carried on since the pleading stage. A memorandum which is uninformative in this regard or does not supply the other information required by the rule should be subject to sanctions under Rule 16(e). R. Field, V. McKusick and L. Wroth Maine Civil Practice (1970) at 323.

The constitutional issues were not raised as petitioner claims. Therefore, respondents respectfully submit petitioner's petition should also be denied for a violation of Rule 21.5, requiring accuracy in the presentation of matters to the court.

QUESTION PRESENTED

Petitioner's statement of the question presented is substantially correct.

STATEMENT OF THE CASE

Petitioner misstates the case in several significant respects. A more complete and accurate statement is contained in the opinion of the Supreme Judicial Court of Maine in Knight v. Radomski, supra.

ARGUMENT

Respondents respectfully submit there are no "special and important reasons" for settling the question presented, as required by Rule 17.

I.

Petitioner's claim is based upon the purported unconstitutionality of Maine's guardianship statutes, specifically 18 M.R.S.A. §§3601, 3603, 3605 and 3607.

Title 18, M.R.S.A. was repealed in its entirety (including the four sections listed above) by the 109th Maine Leglisature, effective January 1, 1981. 1979 Me. Acts c. 540 §24-C.

The Maine Legislature simultaneously enacted the Maine Probate Code, an adaption of the Uniform Probate Code. 1979

Me. Acts. c. 540 §1. The Maine Probate Code, 18-A M.R.S.A., represents a complete revision of Maine's probate laws.

While the new probate code generally addresses the same topics as the repealed Title 18, the four provisions petitioner seeks to challenge here were completely rewritten in the new code.

Any future question regarding the rights of a guardian and ward regarding marriage of the ward will have to be analyzed in terms of the new Code. Any ruling by this Court on the constitutionality of the Maine statutes in question would be of limited significance insofar as it would relate to repealed statutes, and be of uncertain applicability to new statutes. Petitioner, who must demonstrate the

special and important reasons for hearing her appeal, has not drawn the court's attention to any other jurisdictions which have statutes similar to the repealed Maine statutes. Hence respondents respectfully submit any decision rendered by this court on petitioner's claim would be of limited significance, and, therefore, there are no special and important reasons for granting certiorari.

II.

Petitioner has misstated the holding of the Maine Supreme Judicial Court.

> The state interests cited by the court below are intended to control the marriages of mentally disabled adult wards due to perceived deleterious effects on their estates due to marrying. (Petitioner's brief at 17-18)

While the Maine court's decision does consider the economic consequences of marriage by adjudicated incompetents on their estates, its concerns are much broader:

> It should be emphasized that William B. Knight had been appointed guardian of the person as well as the property of Buzz Knight. The responsibilities of a guardian of the person include the full spectrum of responsibilities necessary to provide for the care and overall well-being of the ward, subject to the general superintendency of the court. Because the marriage of a ward can have great impact on matters for which the guardian of his person is responsible under our statutes, it would be inconsistent with the protective purposes of the relevant Maine legislation to permit an incompetent ward to enter effectively a contract of marriage that is not approved by the duly appointed guardian of his person. Knight v. Radomski, Me. 414 A.2d 1211, 1215-1216 (1980).

Petitioner's reliance upon Zablocki v. Redhail, 434 U.S. 374 (1978), is, therefore, misplaced. The Wisconsin statute attacked in that case was found to unconstitutionally abridge the plaintiff's right to marry, since it was based upon the effect of the marriage upon plaintiff's economic condition.

While the court in Zablocki, supra, did find a fundamental right to marry, it did not address the question of rights for minors or the mentally disabled. In a subsequent case, this court noted that conditioning a minor's right to marry upon parental consent is constitutional, given the minor's incapacity to make an informed and mature decision. Bellotti v. Baird,

443 U.S. 622, at 635-6 n. 13 reh. den. 444 U.S. 887 (1979).

There is a similarity in the status of minors and mental incompetents.

> . . . First, though minors do have constitutional rights, their rights are not coextensive with those of adults, partly because of their inability fully to exercise a mature, free choice. Consequently, the level of constitutional protection accorded to the right to marry in Redhail may not extend to the exercise of the right by children. In that case, although the interference is significant, the deprivation would not trigger heightened scrutiny because it would not infringe upon a protected right. Second, even if minors do have a constitutionally protected right to marry, the state is often held to have a valid interest in protecting youth in areas in which it could not "protect" adults, an interest which suffices to justify legislation impinging on the constitutional rights of minors. In both cases, the state

> depends on age as a surrogate for maturity. While such generalizations may be impermissible when the decision involves the exercise of a fundamental right such as the right to abortion, the marriage decision is clearly distinguishable because it can be postponed, unlike the urgent abortion decision. Note, Developments in the Law -- The Constitution and the Family, 93 Harv. L. Rev. 1156, 1258 (1980).

The mental incompetent can, similarly, exercise his choice to marry by altering his guardianship condition whenever his disability is removed.

For both minors and mental incompetents,

> . . . the interests the state seeks to achieve include the protection of the individual from his inability to choose rationally and maturely. The state could achieve this goal by requiring the incompetent's guardian, whose responsibilities parallel those

> of a minor's guardian, to give consent before permitting the ward to marry. Note, Developments in the Law, supra, at 1261.

Respondents therefore submit that no conflict exists between the decision of the Maine Supreme Court in Radomski v. Knight, supra, and prior holdings of this court.

CONCLUSION

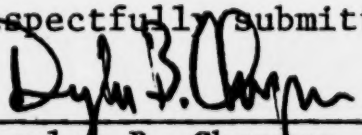
Respondents respectfully submit that this Court is without jurisdiction to hear this case, as it involves a federal constitutional attack on a state statute, an issue not raised below.

Respondents further submit that petitioner has wholly failed to sustain her burden of establishing under Rule 17 that there are special and important reasons why the writ should be granted.

The decision below did not involve an important question of federal constitutional law which has not been, but should be, settled by this Court. The decision of the Maine Supreme Court in Knight v. Radomski, does, in fact, conform to the holdings of this Court. Respondents therefore respectfully contend the writ of certiorari should be denied.

Dated: September 24, 1980

Respectfully submitted:



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Attorneys for Respondents
109 Main Street
Bar Harbor, Maine 04609

APPENDIX A

STATE OF MAINE HANCOCK, SS.	SUPERIOR COURT Civil Action, Docket No. 78-96
WILLIAM B. KNIGHT, in his capacity as Special Guardian of William Austin Knight and WILLIAM AUSTIN KNIGHT his ward Plaintiffs vs. JEAN T. RADOMSKI also known as JEAN T. KNIGHT Defendant	MOTION TO DISMISS, AFFIRMATIVE DEFENSE, AND ANSWER TO AMENDED COMPLAINT

MOTION TO DISMISS

NOW COMES the Defendant, Jean T. Radomski-Knight, by and through her attorney, Martha J. Harris, Esq., and moves to dismiss the Amended Complaint for the reason that it fails to state a claim upon which relief can be granted, and for the further

reasons that this Court has no jurisdiction over the parties or over the subject matter.

AFFIRMATIVE DEFENSE

As and for a first affirmative defense, the Defendant states that on March 29, 1978, the said William Austin Knight was fully capable of contracting marriage.

ANSWER AND AMENDED COMPLAINT

NOW COMES the Defendant, by and through her attorney, Martha J. Harris, Esq., and answers the Plaintiffs' Amended Complaint as follows:

FIRST COUNT

1. The Defendant states that the allegations contained in Paragraph 1 of the Plaintiffs' Amended Complaint are allegations of law requiring no answer.

2. The Defendant admits that William

B. Knight was appointed Special Guardian of William Austin Knight, but denies the allegations of statutory authority therefor.

3. The Defendant denies the allegations contained in Paragraph 3 of the Plaintiffs' Amended Complaint.

4. The Defendant admits that she is a resident of LaJunta, Otero County, Colorado, but states that the Defendant's name is Jean T. Radomski-Knight.

5. The Defendant admits only that Jean T. Radomski-Knight and William Austin Knight were married on March 28, 1978, but denies the remaining allegations contained in Paragraph 5 of the Plaintiffs' Amended Complaint.

6. The Defendant admits the allegations contained in Paragraph 6 of the

Plaintiffs' Amended Complaint.

7. The Defendant admits that on the 17th day of January, 1978, Douglas B. Chapman, Esq., attorney for the said William B. Knight, and Anthony J. Giunta, Esq., Guardian Ad Litem for the said William Austin Knight, stipulated as follows:

"That the said putative ward, William Austin Knight, was and is at all times material to this petition, incompetent to manage his own estate or to protect his rights by reason of mental incapacity," but states that the said William Austin Knight was unaware of said stipulation and that the said Defendant was unaware of said stipulation.

8. The Defendant denies the allega-

tions contained in Paragraph 8 of the Plaintiffs' Amended Complaint, and further states that preconditions to the appointment as temporary guardian were never met and preconditions for the permanent guardianship were not met on March 21, 1978. Further answering, the Defendant states that neither she nor William Austin Knight had notice or knowledge of any of the events alleged in Paragraphs 7 and 8 of the Plaintiffs' Amended Complaint.

9. The Defendant admits that William B. Knight did not consent to the marriage ceremony, but denies that he was Guardian of said William Austin Knight.

SECOND COUNT

10. The Defendant repeats and realleges her answers to Paragraphs 1 through

9 inclusive of the Plaintiffs' Amended Complaint as if set forth at length herein.

11. The Defendant denies the allegations contained in Paragraph 11 of the Plaintiffs' Amended Complaint.

THIRD COUNT

12. The Defendant repeats and realleges her answers to Paragraphs 1 through 11 inclusive of the Plaintiffs' Amended Complaint as if set forth at length herein.

13. The Defendant denies the allegations contained in Paragraph 13 of the Plaintiffs' Amended Complaint.

FOURTH COUNT

14. The Defendant repeats and realleges her answers to Paragraphs 1 through 13 inclusive of the Plaintiff's Amended Complaint as if set forth at length herein.

15. The Defendant denies the allegations contained in Paragraph 15 of the Plaintiffs' Amended Complaint.

16. The Defendant denies the allegations contained in Paragraph 16 of the Plaintiffs' Amended Complaint.

17. The Defendant denies the allegations contained in Paragraph 17 of the Plaintiffs' Amended Complaint.

FIFTH COUNT

18. The Defendant repeats and realleges her answers to Paragraph 1 through 9, 11, 13, 14, 15 and 16 of the Plaintiffs' Amended Complaint inclusive as if set forth at length herein.

19. The Defendant denies the allegations contained in Paragraph 19 of the Plaintiffs' Amended Complaint.

WHEREFORE, the Defendant prays that the Plaintiffs' Amended Complaint be dismissed and that the Defendant be awarded her costs and fees in this behalf incurred.

Dated at Bangor, Maine this 25th day of August, 1978.

Martha J. Harris, Esq.
PAINE & LYNCH
Attorney for Defendant
Eight Harlow Street
Bangor, Maine 04401

APPENDIX B

(Argument of petitioner, defendant below, excerpted from the brief to the Supreme Judicial Court of Maine, dated December 3, 1979)

. . . .

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I. THE PRESIDING JUSTICE GAVE PROPER CONSIDERATION TO THE FACT OF APPOINTMENT OF A GUARDIAN BY THE PROBATE COURT IN DECLARING WILLIAM A. KNIGHT COMPETENT TO MARRY..... 4

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PLAINTIFF'S PRE-TRIAL MEMORANDUM

. . . .

3. Statement of Issues:

a. Was the Defendant Jean T. Radomski already married at the time she attempted to marry the Plaintiff's ward, William Austin Knight.

b. Was the Plaintiff's ward, William Austin Knight, incompetent at the time of the putative marriage.

c. Did William B. Knight, as the Guardian of the Person of Plaintiff's ward, consent to the putative marriage.

d. Was the Plaintiff's ward a person under disability as defined by Title 19, Maine Revised Statutes, 1964, Section 32, as amended, at the time of the putative marriage and therefore, not capable of contracting marriage.

e. Was a Petition for the Appointment of a Guardian of the Plaintiff's ward pending in the Probate Court for Hancock County, Maine, at the time of the putative marriage.

f. Did the Defendant and Plaintiff's ward fail to follow the prerequisites of Title 19, Maine Revised Statutes, 1964, Section 61 and Section 62, as amended.

g. Did the Defendant Jean T. Radomski fraudulently procure any certificate or license necessary for said putative marriage issued by the City Clerk of Augusta, Maine, or the Probate Court for Kennebec County, Maine, for the putative marriage ceremony.

h. Was Plaintiff's ward a resident of Hancock County, Maine, at the time of said putative marriage.

i. Did the Plaintiff, Plaintiff's ward or Defendant apply to or obtain from the Clerk of the City of Ellsworth, Hancock County, Maine, a marriage license for said putative marriage of March 28, 1978.

j. Did the Plaintiff, Plaintiff's ward or Defendant apply to or obtain from any Judge of the Probate Court, the District Court or the Superior

Court in Hancock County, Maine, a certificate stating that in his opinion it was expedient for the intended putative marriage to be solemnized without delay.

k. Did the Judge of the Probate Court of Hancock County or any other Court conduct a hearing on the issue of whether or not it was expedient for the Plaintiff's ward and the Defendant's marriage to be solemnized without delay.

* * *

DEFENDANT'S PRE-TRIAL MEMORANDUM

. . . .

3. STATEMENT OF ISSUES: The Defendant adds to the Plaintiff's issues the following:

1. Whether the Plaintiff is precluded under Title 19, M.R. S.A. Section 632 from bringing this action.

APPENDIX D

(Statement of Issues from Defendant's Pre-trial Memorandum dated April 24, 1979. This is identical to Plaintiff's Statement of Issues except for the omitted discussion.)

. . . .

3.) Issues.

(A) Is William A. Knight competent to manage his own affairs.

[DISCUSSION]

(B) If William Austin Knight is determined to be incompetent, is William Beedle Knight qualified to be guardian of his funds.

[DISCUSSION]

(C) If William Austin Knight is determined to be incompetent, who would be the most appropriate

guardian of the person for him.

[DISCUSSION]

(D) Should the pending annulment action be heard in a bifurcated trial.

[DISCUSSION]

OCT 28 1980

MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

No. 80-325

JEAN T. RADOMSKI, also known as Jean T. Knight,

Petitioner,

vs.

WILLIAM B. KNIGHT, as Special Guardian of William Austin Knight, and William Austin Knight, his ward,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF MAINE

BRIEF FOR PETITIONER IN REPLY

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Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF MAINE

BRIEF FOR PETITIONER IN REPLY

INTRODUCTION

Respondents, in their Brief for Respondents in Opposition, alleged that this Court is without jurisdiction to hear this case, as it involves a federal constitutional attack on a state statute, an issue not raised below.

Respondents further claim that Petitioner has wholly failed to sustain her burden of establishing under Rule 17 that there are special and important reasons why the writ should be granted.

For the reasons set forth below and in Petitioner's Petition for Writ of Certiorari, Petitioner respectfully requests this Court to issue a writ of certiorari to review the judgment and opinion of the Supreme Judicial Court of Maine entered in this proceeding on May 30, 1980.

I

THE SUPREME COURT HAS JURISDICTION TO GRANT CERTIORARI IN THIS CASE BASED ON THE RECORD BELOW

Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1257(3) and 28 U.S.C. § 2403(b). The federal question involved is that Maine's guardianship statutes, as construed by Maine courts, render illusory the fundamental right to marry of the mentally disabled in Maine by permitting third parties to have an absolute and arbitrary veto over the exercise of that right, and this veto violates federal constitutional guarantees of equal protection, due process and right of privacy.

Respondents cite Cardinale v. Louisiana, 394 U.S. 437 (1969); Hill v. California, 401 U.S. 797 (1971); Estate of Wilson v. Aiken Industries, 439 U.S. 877 (1978), in support of their claim that this Court is without jurisdiction to

hear this case. These cases are not applicable in the present case as those cases involve situations where the sole federal question argued had never been raised, preserved or passed upon in the state courts below.

Petitioner, at oral argument before the Maine Supreme Judicial Court, argued, as excerpted in Appendix A, that to construe the guardianship provisions to disable a mentally incompetent ward from contracting marriage, without prior guardian or court approval, would violate the ward's federal constitutional rights to marry and of privacy.

Further, during that argument, Justice Glassman stated the following:

> . . .But here we are concerned with a more fundamental issue, and that is, does the statute permit him [ward] to enter into a marital relationship, a marital contract at all without regard to what, in fact, what his capacity may be.

(A-4)

This clearly shows that the Maine Supreme Judicial Court had before it, and was considering, the constitutionality of the statute. This is further supported by the following exchange between Justice Wernick and Mr. Robitzek (Petitioner's counsel):

> "JUSTICE WERNICK: You are saying that, as applied to this case, a marriage indication that the subject the wardship to conclude marriage ipso facto would make this an unconstitutionally applied statute; is that your argument?"
>
> "MR. ROBITZEK: If the statute were interpreted per se to exclude marriage."

(A-7)

Further, Petitioner would refer the Court to her Motion to Dismiss filed at the beginning of the trial and denied by the trial judge, as excerpted in Respondent's brief at page six (6), which clearly shows that the constitutional issues involved herein were raised at the trial level.

Therefore, because the issues were raised and were before the court at both the trial and appellate levels, this Court has jurisdiction to hear the instant case.

II

THE SUPREME COURT HAS INHERENT JURISDICTION IN A CASE WHERE INJUSTICE MIGHT OTHERWISE RESULT SHOULD REVIEW NOT BE GRANTED

Even if this Court were to rule, although Petitioner urges that it does not, that Petitioner raised the federal constitutional issues before this Court for the first time, this Court has jurisdiction to hear the instant case.

This Court has decided federal constitutional issues raised for the first time in proceedings before it. Hormel v. Helvering, 312 U.S. 552 (1941); Glidden Company v. Zdanok, 379 U.S. 530 (1962); Boynton v. Virginia, 364 U.S. 454 (1960).

Even Younie v. State, 281 A.2d 446 (1971), which Respondents cite in their Brief for Respondents in Opposition, recognizes that in rare instances the Supreme Court of the United States will decide federal constitutional questions raised for the first time in proceedings before it.

As Justice Black stated in Hormel v. Helvering, supra:

> "There may always be exceptional cases or particular circumstances which will prompt a reviewing or appellate court, where injustice might otherwise result, to consider questions of law which were neither pressed nor passed upon by the court or administrative agency below." See Blair v. Oesterlein Machine Co., 275 U.S. 220, 225.

> "Rules of practice and procedure are devised to promote the ends of justice, not to defeat them. A rigid and undeviating judicially declared practice under which courts of review would invariably and under all circumstances decline to consider all questions which had not previously been specifically urged would be out of harmony with this policy.

> Orderly rules of procedure do not require sacrifice of the rules of fundamental justice." Id. at 557.

Petitioner submits that Justice Black's policies are fully applicable here.

The decision of the Maine Supreme Judicial Court below denies a ward's federal constitutional right to marry, and by doing so, denies Petitioner her fundamental right to marry an adult ward of a guardian. In light of this Court's recent acknowledgment of the need to review family law and mental health matters, it is submitted that Petitioner's case is the type that should be considered on the merits and that certiorari should be granted.

III

THERE EXIST SPECIAL AND IMPORTANT REASONS WHY THE WRIT SHOULD BE GRANTED

Respondents submit that there are no "special and important reasons" for

settling the question presented, in that Maine's guardianship statutes have been repealed and replaced by Maine's new probate laws, and that, therefore, any decisions rendered by this Court on Petitioner's claim would be of limited significance.

The fact that Maine has repealed its former guardianship statutes is irrelevant to the instant case. The Maine Supreme Judicial Court based its decision on the former guardianship statutes, and thus the Ward's and Petitioner's fundamental right to marry rests on the Maine court's interpretation of those guardianship statutes.

Further, the Maine Supreme Judicial Court denied the Ward's and Petitioner's right to marry by interpreting marriage as a contract under the appliable Maine statutes, and thus not allowing an adult ward to contract marriage without consent of his guardian in this instance. A ruling

by this Court on the constitutionality of the Maine statutes in question and the Maine Court's construction thereof, would be of great significance, as it would decide whether any guardian of an adult ward constitutionally may arbitrarily refuse to ratify his ward's marriage. Hence, Petitioner submits that there exist special and important reasons for granting certiorari.

IV

RESPONDENTS' BRIEF CONTAINS IRRELEVANT AND IMMATERIAL MATTER, AND SHOULD BE DISREGARDED AND STRICKEN BY THE COURT

Petitioner submits that Respondents' Brief for Respondents in Opposition contains irrelevant and immaterial matter and should be disregarded and stricken by the Court in accordance with Rule 22.1 and Rule 34.6. Respondents attach an Appendix B in their opposing brief, yet make no mention of an "Appendix B" in the body of

their brief. The purpose of appendices is to supplement the body of the brief, not to add new material.

Respondents, by listing Appendix B, which contains material not referred to in their brief, nor brought before this Court on the Record, brings before this Court irrelevant and immaterial matter, as it cannot be determined for what purpose Respondents chose to list Appendix B. Petitioner submits that Respondents' brief may be disregarded and stricken for a violation of Rule 22.1 and Rule 34.6.

CONCLUSION

Petitioner respectfully submits that this Court has jurisdiction to hear this case, as it involves a federal constitutional attack on a state statute, an issue raised below.

Petitioner further submits that, even if this Court rules that the federal constitutional issue is raised before

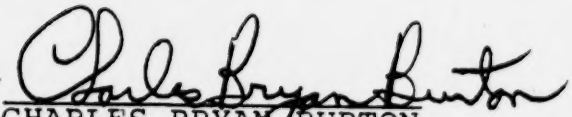
this Court for the first time, this Court has jurisdiction as this is an exceptional case where injustice might otherwise result should review not be granted.

Further, Petitioner submits that there exist special and important reasons why the writ should be granted, as this Court's decision will have the impact of deciding if a guardian may absolutely and arbitrarily veto an incompetent's marriage contract.

Finally, Petitioner submits that Respondents' Brief in Opposition contains irrelevant and immaterial matter, by listing an Appendix B not referred to in the body of the brief, and should be disregarded and stricken by the Court.

The Petition for Certiorari should be granted.

Respectfully submitted,

By 
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DATED: October 23, 1980.

APPENDIX A

(Excerpts from oral argument on appeal before the Supreme Judicial Court of the State of Maine sitting as the Law Court - pages 24 - 28).

". . . MR. ROBITZEK: I first have to reiterate that I think marriage is a different type of contract if it is a contract at all, from the one represented in the statute, and, secondly, when you are dealing with marriage, what we are dealing with, basically, is the constitutional issue. It is a fundamental right and in order for a statute to take away or deprive a person of a constitutional right, I think that statute has to be subjected to strict scrutiny.

CHIEF JUSTICE McKUSICK: Isn't the right to make business agreements and to take and convey property, isn't that a constitutional protected right?

MR. ROBITZEK: Your Honor, I think

that only rises to constitutional questions if the state attempts to affect contracts that are already in existence.

I believe the guardianship statute would have prospective application for future contracts either business or marriage. I don't know that that -- that purely business contracts would raise this constitutional issue, but it has been recognized by the Supreme Court that marriage, the right of privacy, and some sorts of sexual intimacy, that is a constitutional right.

JUSTICE WERNICK: Are you suggesting that marriage is not a contract, it is a consensual act, and that there is a difference in that regard even though it is loosely called a contract, it does not have the usual overtones and it is really a way of consenting to an arrangement which then creates all kinds of status relationships that have nothing to do with contracts?

MR. ROBITZEK: I would agree with that except that in addition I have to admit that a marriage agreement calls upon the parties for certain obligations, mutual obligations, which, in that sense, also resemble a contract.

JUSTICE GODFREY: Again with reciprocal consent, does it not?

JUSTICE GODFREY: It is a consensual act, and isn't that just the point of 3607, that here is a person who should not be permitted to run around and give consent because he hasn't had the ability to make -- exercise any degree of wisdom in making those agreements?

MR ROBITZEK: Well, I think there are certain Maine cases which deal with the issue of mental capacity to enter into any kind of agreement, and I think what they basically pointed to is the fact that there are these gradations of abilities.

JUSTICE GLASSMAN: That's beside the point. You only get into the question of whether, in fact, this individual had mental capacity if we get by the first issue, and that is does the statute prohibit him from entering into a marital contract without regard to whether, in fact, he may have some kind of capacity to understand what he is doing. Isn't that the place in which the position is different? Clearly, if we get to the second issue, I gather that the presiding justice has made findings as to what this man's capacity is, and then our problem is whether the evidence in the record support those findings.

But here we are concerned with a more fundamental issue, and that is, does the statute permit him to enter into a marital relationship, a marital contract at all without regard to what, in fact, what his capacity may be.

MR. ROBITZEK: Well, as to that, what I have said before, that I don't think that either based on other states' interpretation of similar statutes, or because of the fact that it raises constitutional issue regarding the status of marriage, I don't think that this particular statute should be interpreted so that the term 'contract' includes marriage.

JUSTICE GODFREY: You have no case, have you, in which it has been held constitutionally improper to bar marriages where one of the persons or both is feeble-minded or idiotic?

MR. ROBITZEK: No, I don't have any cases on that, your Honor. The cases that I am referring to would be cases, for example, going back to Skinner vs. Oklahoma, (1923), which I believe started the whole right to privacy concept in this regard, and that was a case in which, I believe, there was mandatory sterilization

of people who were convicted of embezzlement.

JUSTICE GLASSMAN: But this individual's right to privacy as you describe it, has already been invaded, has already been infringed, and the state has intervened and appointed a guardian to run his affairs because there has been a finding and determination, which isn't a fact here, that he was incompetent to handle his own affairs, so, to that extent, this individual's privacy has already been invaded.

Now, do you have any case that says under those circumstances, where there has been a prior legal determination of incapacity to contract, that it is in violation of some constitutional right for the state to also say that that individual who lacks capacity to contract lacks capacity to marry?

MR. ROBITZEK: Your Honor, I

haven't got a case on point here. The case that I would point to, however, is Griswold vs. Connecticut, which stated that the Court should be very wary of dealing in general statutes when there are problems, and I think in terms of the definition that this Court chooses to give to the term of contract, whether it is going to apply to everything you can conceivably call upon, whether business or personal, I think there is a severe danger of getting into that area of --

JUSTICE WERNICK: You are saying that, as applied to this case, a marriage indication that the subject the wardship to conclude marriage ipso facto would make this an unconstitutionally applied statute; is that your argument?

MR. ROBITZEK: If the statute were interpreted per se to exclude marriage.". . .